

ARIZONA SUPREME COURT
FIDUCIARY BOARD

IN THE MATTER OF LICENSED
FIDUCIARY:

Michael Bogle
License Number 20628

CONSENT AGREEMENT

And

East Valley Fiduciary Services, Inc. License
Number 20592

JURISDICTION

The Fiduciary Board is empowered pursuant to A.R.S. § 14-5651 *et. seq.* to regulate the license and practice of private fiduciaries in the State of Arizona.

East Valley Fiduciary Services, Inc. ("East Valley") has been issued license number 20592.

Michael Bogle has been issued license number 20628.

FACTS

During May of 2018, the Certification and Licensing Division (the "Division") received a number of complaints (Complaints 18-0007 through 18-0031 collectively the "Complaints") filed by individuals who knew Norman Silver. The Complaints were filed against Michael Bogle and East Valley. The Complaints allege that, pursuant to a power of attorney, Mr. Bogle and East Valley wrongfully removed Mr. Silver from his home and placed him in a secure assisted living facility against his will. Mr. Silver demonstrates memory issues and has demonstrated difficulty in performing certain daily functions without assistance.

1 On January 24, 2018, Mr. Silver executed a power of attorney appointing East Valley. On
2 or about April 16, 2018, Mr. Bogle and East Valley used the power of attorney to place Mr. Silver
3 in a secure assisted living facility.

4 Since his placement in the assisted living facility, Mr. Silver has consistently expressed
5 his objection to that placement. On or about April 24, 2018, Mr. Silver executed a revocation of
6 the power of attorney and Mr. Silvers' friends delivered the revocation to Mr. Bogle and East
7 Valley. Once delivered, Mr. Bogle and East Valley rejected the revocation. The revocation was
8 rejected without meeting or speaking with Mr. Silver and without doing additional due diligence
9 concerning Mr. Silver's competence.

10 East Valley viewed the revocation as invalid based upon their belief that Mr. Silver lacked
11 the capacity to execute a revocation. This belief was based upon an written evaluation of Mr.
12 Silver performed by a Nurse Practitioner for an initial Arizona Palliative Home Care Admission
13 ("APHCA") dated January 29, 2018 and the opinions and findings by Mr. Silver's physician, in
14 his report dated April 11, 2018.

15 Division staff has interviewed a number of the complainants, staff at the assisted living
16 facility and Mr. Silver and believe Mr. Silver to have the capacity to revoke his power of attorney.
17 *See Golleher v. Horton, 148 Ariz. 537, 715 P.2d 1225 (Ct App. 1985).* Division staff also reviewed
18 the written reports of January 29th and April 11th.

19 Mr. Bogle and East Valley recognize the capacity standards set forth in *Golleher v. Horton*,
20 and further recognize their obligation to apply those standards to the granting or revocation of
21 power of attorney. Mr. Bogle and East Valley believe they have done so with regards to Mr. Silver.

22 Mr. Bogle and East Valley further acknowledge that upon receipt of the revocation
additional due diligence should have been performed to determine Mr. Silver's competence

1 according to the standard set forth in *Golleher v. Horton* and if there was no clear conclusion
2 regarding Mr. Silver's competence, guidance from the court should have been sought.

3 On November 13, 2018, Mr. Bogle and East Valley filed a petition to be appointed as Mr.
4 Silver's guardian. Mr. Bogle and East Valley did not file a petition to be appointed conservator
5 for Mr. Silver at that time. The original filing of the petition only contained information regarding
6 the request for appointment of a guardian and representations that East Valley had a valid power
7 of attorney so that a conservatorship was unnecessary. On February 5, 2019 East Valley filed an
8 Amended Petition for Guardian and Petition for Appointment of Conservator.

9 Mr. Bogle and East Valley acknowledge that the interests of Mr. Silver to wit: Mr. Silver's
10 revocation of East Valley's powers of attorney, accompanied by East Valley's position that it did
11 not recognize the revocation as valid should have been expressed to the court in a timelier manner.
12 Further Mr. Bogle and East Valley acknowledge that they should have informed Mr. Silver's
13 Court-Appointed Counsel of the same in a timelier manner.

14 Subsequently, Mr. Silver's son Greg Silver agreed to be appointed as his father's Guardian
15 and Conservator. On March 6, 2019, the Court made the following findings *inter alia*: that Mr.
16 Silver was an incapacitated person as defined by A.R.S. §14-5101(1), and entered orders
17 including the following: appointing Greg Silver as Guardian and Conservator of Mr. Silver and
18 revoking all powers of attorney.

19 Subject to an appropriate Fiduciary Board determination Mr. Bogle and East Valley have
20 agreed to the following resolution of the Complaints: The Fiduciary Board issues a Censure and
21 places Mr. Bogle and East Valley on probation pursuant to the terms set forth below.
22

1 **AGREEMENT**

2 By entering into this Consent Agreement, Mr. Bogle, and East Valley and the Fiduciary
3 Board agree to the following provisions:

4 1. Mr. Bogle and East Valley are placed on probation for one year during which time they
5 must:

- 6 a. Within five business days report to Division staff if any individual asserts that he/she
7 wish to revoke a power of attorney. The report shall describe the facts and the resolution.
8 b. With regard to any Superior Court case, Mr. Bogle and East Valley shall fully inform the
9 Superior Court and further demonstrate to Division staff that the Superior Court was fully
10 informed of all facts related to the revocation of a power of attorney.
11 c. Within 90 days of the execution of this agreement, receive additional appropriate training
12 (in person or in written form) from an Arizona licensed attorney concerning an individual's
13 authority to revoke a power of attorney and the authority of an agent pursuant to a power
14 of attorney and shall receive additional appropriate training (in person or in written form)
15 from an Arizona licensed attorney concerning the best practices for client case
16 management and oversight of staff licensed fiduciaries. These trainings shall be in a form
17 and substance satisfactory to Division staff, upon completion of the trainings, report to
18 Division staff the substance of the trainings.
19 d. Comply with all laws, court rules and administrative codes.

20 2. The Fiduciary Board will issue Censure to Mr. Bogle and East Valley.

21 3. Upon a breach of this agreement, the Fiduciary Board may reopen the Complaints and
22 take such further disciplinary action as it determines appropriate.

16 Dated this _____ day of _____, 2019

18 _____
19 Michael Bogle
20 East Valley Fiduciary Services, Inc.

17 
18 _____
19 Deborah Primock,
20 Chairperson, Fiduciary Board

21 By: _____
22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

AGREEMENT

By entering into this Consent Agreement, Mr. Bogle, and East Valley and the Fiduciary Board agree to the following provisions:

1. Mr. Bogle and East Valley are placed on probation for one year during which time they must:

- a. Within five business days report to Division staff if any individual asserts that he/she wish to revoke a power of attorney. The report shall describe the facts and the resolution.
- b. With regard to any Superior Court case, Mr. Bogle and East Valley shall fully inform the Superior Court and further demonstrate to Division staff that the Superior Court was fully informed of all facts related to the revocation of a power of attorney.
- c. Within 90 days of the execution of this agreement, receive additional appropriate training (in person or in written form) from an Arizona licensed attorney concerning an individual's authority to revoke a power of attorney and the authority of an agent pursuant to a power of attorney and shall receive additional appropriate training (in person or in written form) from an Arizona licensed attorney concerning the best practices for client case management and oversight of staff licensed fiduciaries. These trainings shall be in a form and substance satisfactory to Division staff, upon completion of the trainings, report to Division staff the substance of the trainings.
- d. Comply with all laws, court rules and administrative codes.

2. The Fiduciary Board will issue Censure to Mr. Bogle and East Valley.

3. Upon a breach of this agreement, the Fiduciary Board may reopen the Complaints and take such further disciplinary action as it determines appropriate.

Dated this 16th day of MAY, 2019



Michael Bogle
East Valley Fiduciary Services, Inc.

Deborah Primock,
Chairperson, Fiduciary Board

By: _____